

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Direct Access to the
INTELSAT System

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IB Docket No. 98-192
File No. 60-SAT-ISP-97

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF ICG SATELLITE SERVICES, INC.

I. INTRODUCTION

ICG Satellite Services, Inc. ("ICG"), by its attorneys and pursuant to the Federal Communications Commission's ("FCC's" or "Commission's") *Notice of Proposed Rulemaking* ("*NPRM*")¹ in the captioned proceeding, hereby submits its comments regarding the Commission's proposal to allow direct access to the International Telecommunications Satellite Organization ("INTELSAT") system. As discussed below, ICG strongly supports the Commission's proposal to permit Level 3 direct access.² ICG also suggests such additional measures as a "fresh look" period

¹ *Direct Access to the INTELSAT System*, Notice of Proposed Rulemaking, IB Docket No. 98-192, FCC 98-280, released October 28, 1998 ("*NPRM*").

² The Commission believes that it does not currently have authority to implement Level 4 "investment" direct access under the Communications Satellite Act of 1962 ("Satellite Act"), and that such access will require an act of Congress. *NPRM* at ¶ 15. Therefore, the *NPRM* focuses on the implementation of Level 3 access only. However, ICG believes that Level 4 access is needed because, as noted in Appendix A of the *NPRM*, Level 4 direct access to INTELSAT is already permitted in 17 countries. Level 4 access enhances competition beyond Level 3 access because it permits companies to invest directly in INTELSAT, thereby obviating the need to pay a rate of return to Comsat. Moreover, Comsat subsidiaries are already permitted Level 4 access to INTELSAT in Argentina and the United Kingdom. Because would be competitors of Comsat do not have Level 4 access here in the United States, but Comsat has Level 4 access in other countries, Comsat enjoys an unfair competitive advantage over all other potential providers. Accordingly, Level 4 access must be made available in the United States in order for satellite service providers to compete effectively (continued...)

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and retention of regulatory restrictions to promote a competitive marketplace.

II. DISCUSSION

A. Background

ICG provides low cost solutions for voice, data, and compressed video services to the maritime market and international voice, data and video transmission, all via satellite. ICG operates a network of teleport access points that include Holmdel in New Jersey, Steele Valley and Napa Valley in California, Miami in Florida, Eik in Norway and Denver in Colorado. ICG's subsidiary Maritime Telecommunications Network, Inc. ("MTN") provides satellite telecommunications services to cruise ships, U.S. Navy ships, oil drilling rigs, seismic research vessels and other types of ships by means of earth stations mounted on the various ships. ICG does not own any space station facilities. Rather, ICG leases the space station transponder capacity of various satellite systems, including the INTELSAT system, New Skies, and various domestic satellites. At the present time, ICG's use of the INTELSAT system is, necessarily, arranged through contracts with Comsat Corporation ("Comsat").

Comsat, as the United States signatory to that organization, currently enjoys monopoly access to INTELSAT. As such, it has significant advantages over competing providers of satellite

²(...continued)

in the provision of satellite services via the INTELSAT system. Because Congress must amend the Satellite Act before Comsat can merge with Lockheed Martin, ICG urges the Commission to recommend that Congress amend the Satellite Act to permit Level 4 access when it next amends the Satellite Act to permit the merger.

communications services.³ In particular, by virtue of its status as the monopoly provider of INTELSAT services in the United States, Comsat's rates are significantly higher than those which could otherwise be obtained directly from INTELSAT. As the FCC noted in Appendix B of the *NPRM*, Comsat's user rates are anywhere from one-and-a-half to almost four times those charged by INTELSAT for Level 3 access. Any user wanting to access the INTELSAT system from the United States must do so through Comsat, and, therefore, must pay the monopoly user rates.

B. Direct Access Should Be Permitted and Made a Pre-Condition to Approval of the Lockheed Martin/Comsat Merger

Direct access to the INTELSAT system would enable INTELSAT users to reduce their operational costs. As a result, market-based forces will invariably increase competition, ultimately benefitting the public by expanding the services offered, encouraging efficient use of resources, and reducing overall costs to the end-user. History is replete with instances where the introduction of a competitive marketplace has resulted in the reduction of rates far below the prior government-regulated monopoly levels. For example, long distance telephone rates are only a fraction of the rates charged by the AT&T monopoly many years ago. More recently, the introduction of PCS competitors into the wireless telecommunications marketplace has resulted in the overall reduction of wireless rates. In order to bring such market forces to bear on the rates charged for international satellite services, the Commission must allow direct access to INTELSAT.

It is particularly important that direct access be permitted prior to any implementation of the proposed acquisition of Comsat by Lockheed Martin. As the Commission is aware, Lockheed

³ See, e.g., *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations Provide Domestic and International Satellite Service in the United States*, Report and Order, FCC 97-399, 12 FCC Rcd 29094 at ¶¶ 125-126 (1997).

Martin obtained authorization in 1997 to build and operate its "Astrolink" system.⁴ The system will be comprised of nine interconnected geostationary fixed satellites located in five orbital locations around the world. In addition, a joint venture between Lockheed Martin and Moscow-based Intersputnik, called Lockheed Martin Intersputnik, is scheduled to deploy its first satellite early in 1999. These networks of space stations will be separate and distinct from the INTELSAT system.

Comsat holds a 17.977412 percent interest in INTELSAT, which is by far the largest percentage held by any single entity. Furthermore, Comsat has a monopoly in the United States market in the provision of international satellite services through the INTELSAT system. Without the opportunity for users to have direct access to INTELSAT, the proposed merger will enable Lockheed Martin to gain monopoly access to additional satellites through the INTELSAT network, thereby giving it an unfair competitive advantage over other satellite users. In order to minimize the competitive harm which will be caused by the merger, direct access must be allowed by the Commission so that all satellite users may use the INTELSAT system on an equal basis, without being subjected to Comsat's monopoly rates.

In the past, the Commission has noted that it must be especially concerned about mergers between incumbent monopoly providers and possible rivals, and, accordingly, it has conditioned

⁴ See *Lockheed Martin Corporation Application for Authority to Construct, Launch, and Operate a Ka-Band Satellite System in the Fixed-Satellite Service*, Order and Authorization, DA 97-973, FCC File Nos. 182 through 186-SAT-P/LA-95 (1997).

such mergers on the creation of pro-competitive benefits for non-dominant market players.⁵ Such conditions have included the provision of continued detailed monitoring reports to the Commission, and the satisfaction of benchmarks measuring competitive market conditions.⁶ Given Comsat's monopoly status in the provision of INTELSAT services, and Lockheed Martin's favorable positions in the satellite market, the FCC should require that the merger be subject to similar pro-competitive conditions.

C. A "Fresh Look" Policy Should Be Implemented to Promote Competition

In order to foster competition in a previously monopolistic environment, ICG urges the Commission to require Comsat to permit companies to take a "fresh look" at the contracts that they already have in place with Comsat. The "fresh look" policy applies where an area previously subject to monopoly opens to competition or where an area is subject to significant changed circumstances.⁷ The Commission has implemented its "fresh look" policy in several instances.⁸ Each time, the "fresh look" policy led to increased competition, lower rates, and improved services for the consumer. The advent of direct access is a situation ripe for application of this policy.

Currently, domestic INTELSAT users have contracts in place with Comsat which may

⁵ See, e.g., *Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries*, Memorandum Opinion and Order, 12 FCC Rcd 19985 (1997); *In the Matter of the Merger of MCI Communications Corp. and British Telecommunications PLC*, Memorandum Opinion and Order, 12 FCC Rcd 15351 (1997).

⁶ *Id.*

⁷ See, e.g., *Telecommunications Services Inside Wiring*, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 97-376, CS Docket No. 95-184; MM Docket No. 92-260 (1997).

⁸ See, e.g., *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 16044-45 (1996).

continue for several months or even years after direct access to INTELSAT is available. In order to remedy the effects of the previous monopoly regime, and to allow all domestic INTELSAT users to compete with each other on an equal basis, the FCC should implement a "fresh look" policy regarding all Comsat user contracts. A "fresh look" policy will allow INTELSAT users who are currently obligated to pay inflated monopoly provider rates the opportunity to evaluate their current space segment needs, and either renegotiate their contracts with Comsat or obtain access directly from INTELSAT as conditions warrant.

D. Retention of Regulatory Safeguards Is Necessary

The Commission has determined in similar proceedings involving the deregulation of monopoly industries that the continuation of regulatory safeguards is appropriate to ensure that vigorous and robust competition continues without undue influence from former monopoly providers.⁹ This need to continue regulatory safeguards is particularly important in the case of Comsat, because Comsat will continue to have market dominance due to the fact that it will continue to earn a rate of return of up to 21 percent off of its competitors' use of the INTELSAT system.

In order to prevent Comsat from using its market power from inhibiting the growth of free market competition, the Commission should also continue its current regulatory restrictions on Comsat following the implementation of direct access. For example, even though the FCC granted Comsat non-dominant carrier classification in April for certain markets, Comsat is still classified as

⁹ See, e.g., *Motion of AT&T Corp. to be Reclassified as a Non-dominant Carrier*, Order, 11 FCC Rcd 3271 (1995). AT&T was classified as a dominant carrier for many years after the introduction of competition into the long distance telephone market. AT&T was not reclassified as non-dominant until the Commission concluded that competition had substantially taken hold, and that AT&T no longer held market power.

dominant in the provision of (i) switched voice and private line services between the United States and 63 countries and (ii) occasional-use video service between the United States and 142 countries.¹⁰ Therefore, in those markets where Comsat is still classified as a dominant carrier, Comsat is still subject to Sections 61.38 and 61.58 of the Commission's dominant carrier tariff rules, including rate regulation.

In addition, although there are no longer any structural separation requirements for Comsat's provision of INTELSAT services, Comsat is still subject to certain non-structural safeguards -- that is, cost allocation and accounting requirements in order to properly allocate costs incurred by the respective business activities to the correct business units.¹¹ Comsat must also continue to unbundle its tariffs for earth station and INTELSAT space segment services by filing separate and distinct tariffs for these services.¹² Enforcement of these regulatory restrictions is critical, because Comsat would otherwise be able to use its dominant market power resulting from its previous monopoly position and its continuing rate of return of up to 21 percent on its INTELSAT investment to unfairly subsidize its earth station operations and thereby force its competitors out of business.¹³

¹⁰ *Comsat Corporation Petition Pursuant to Section 10(c) of the Communications Act of 1934, as amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier*, Order and Notice of Proposed Rulemaking, FCC 98-78 at ¶ 2, released April 28, 1998.

¹¹ *Id.* at ¶ 172.

¹² *Id.* at ¶ 173.

¹³ The implementation of Level 4 access would help to mitigate Comsat's dominant market position, because a carrier with Level 4 access would not be contributing to Comsat's rate of return. As discussed in footnote 2, *supra*, ICG urges the Commission to recommend that Congress amend the Satellite Act to permit Level 4 access when it next amends the Satellite Act to permit the merger of Comsat and Lockheed Martin.

E. Restrictions on Comsat INTELSAT Actions are Required


ICG also urges the Commission to adopt policies that will ensure that Comsat cannot discriminate against competitors from using the INTELSAT system, or from competing in the satellite marketplace. Specifically, under INTELSAT procedures, Comsat, as the United States Signatory, must authorize each Level 3 direct access contract. Accordingly, in granting direct access to the INTELSAT system, the FCC must require that Comsat: (i) authorize all contracts submitted for its consideration for direct access to INTELSAT; (ii) not use its access to such contracts to expand its customer base through the use of unfair marketing techniques; and (iii) not employ any policies that will disfavor or discriminate against its competitors. In addition, the FCC must prohibit Comsat from voting its 17.977412 percent interest in INTELSAT in such a way as to have INTELSAT adopt policies that would restrict direct access.

III. CONCLUSION

WHEREFORE, for the reasons discussed herein, ICG Satellite Services, Inc. urges the Commission to adopt rules to implement direct access to the INTELSAT system, including the regulatory procedures necessary to ensure a competitive marketplace.

Respectfully submitted,

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